



law. Monmouth County determined that Petitioner was eligible as of October 1, 2016 but had transferred a total of \$245,145 for less than fair market value. At issue are transfers relating to household expenses and the transfer of her share of the home she shared with her daughter and son-in-law. In the prior matter, docketed at HMA 8410-2017, the Final Agency Decision adopted, modified and reversed portions of the Initial Decision. A portion of the matter was also remanded to the OAL for further findings. This Final Agency Decision addresses the matter on remand as well as incorporating by reference the determinations made on the other issues in the prior decision.

A resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). "A transfer penalty is the delay in Medicaid eligibility triggered by the disposal of financial resources at less than fair market value during the look-back period." E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 (App. Div. 2010). "[T]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification." Ibid. Congress's imposition of a penalty for the disposal of assets for less than fair market value during or after the look-back period is "intended to maximize the resources for Medicaid for those truly in need." Ibid.

Limited exemptions to the transfer penalty rules exist. The New Jersey regulations regarding the caregiver exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt from penalty. It is Petitioner's burden to prove that she is entitled to the exemption.

As was noted previously, Petitioner transferred her share of the home to her daughter and son-in-law. Neither the federal nor state law extends the caregiver exemption to spouse of the son or daughter. The portion of Petitioner's transfer of her interest to her son-in-law or \$118,827 was determined to be subject to penalty regardless of the outcome of the remand.

Additionally, there were payments Petitioner made to service the mortgage after her entry into the nursing facility in November 2014. Petitioner had already paid off one-half of the mortgage which represented her fair share. The use of her funds to pay the entire mortgage obligation from December 2014 through May 2015 was a transfer of assets for which she received no fair market value. These payments of \$10,825.47 are included in the transfer penalty

On remand, Petitioner presented a different witness, Mark Pass, M.D. regarding her condition for the two years prior to entering the nursing facility. Dr. Pass was qualified as an expert witness and reviewed Petitioner's medical records. To that end, he determined that Petitioner's Alzheimer's disease diagnosis occurred in December 2011. ID at 7. The list of medicines that Petitioner was prescribed demonstrated that her condition deteriorated during the time leading up to her entry into a nursing home. However, to the extent Dr. Pass discussed Petitioner's mental capacity to execute a Power of Attorney (POA) in March 2015, I must note that Dr. Pass did not examine Petitioner nor perform any tests to determine the extent of any cognitive deficits in 2015. As such, Dr. Pass cannot provide an opinion on whether Petitioner had the capacity to execute the POA.<sup>1</sup> The remand identified Petitioner's ability to execute a notarized POA at odds with the claims about the severity of her dementia. However, the need for nursing home level of care can exist without cognitive impairment and I am satisfied that the recitation of the comorbidity of

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<sup>1</sup> Petitioner was represented in the prior hearing by the attorney who notarized the POA document and would have had to determine if Petitioner had the ability to sign the document. That attorney did not represent Petitioner in the remanded proceedings and she was not called as a witness.

Petitioner's diseases overrides any issues whether she had the capacity to sign the POA at that time.

Based on my review of the record and the applicable law, I hereby ADOPT the Initial Decision's thorough and detailed findings that the specific facts and circumstances of this case set forth in the record warrant an exemption from transfer penalty for the portion of the home that was transferred to Petitioner's daughter. The determinations of the transfers listed in the under the prior docketed matter are incorporated by reference. Monmouth County should modify the penalty accordingly.

THEREFORE, it is on this <sup>4th</sup> day of NOVEMBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services